

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

August 28, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:09MD-079

MAUI

Mutual Cancellation of Lease of Non-Exclusive Easement S-5252 and Issuance of Term, Non-Exclusive Easement to Meri-Jo Abrams Manuel, Trustee of the Lakala Trust for Wooden Deck and Concrete Piers Purposes, Lahaina, Maui, Tax Map Key: (2) 4-5-001:055:seaward of Tax Map Key: (2) 4-5-001:006.

APPLICANT:

Meri-Jo Abrams Manuel, Trustee of the Lakala Trust, whose mailing address is P.O. 1209, Makawao, Hawaii 96768.

LEGAL REFERENCE:

Section 171-13 and 53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of government submerged land situated at Lapaakea, Lahaina, Maui, identified by Tax Map Key: (2) 4-5-001:055:seaward of Tax Map Key: (2) 4-5-001:006, as shown on the attached map labeled Exhibit A.

AREA:

1,310 square feet, more or less.

ZONING:

State Land Use District:	Conservation
County of Maui CZO:	Historic District 2, Special Management Area

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO \_\_\_\_\_x

CURRENT USE STATUS:

Encumbered by Lease of Non-Exclusive Easement S-5252, Elizabeth D. Wilson, Trustee of the Lakala Trust, Lessee, for right, privilege, and authority to maintain and repair the existing concrete piers and to use, repair, maintain and renovate the wooden decks covering said concrete piers. Lease to expire on May 24, 2012. Last rental reopening occurred on May 25, 2002. Rent is currently \$13,703 per annum.

CHARACTER OF USE:

Right, privilege, and authority to maintain and repair the existing concrete piers and to use, repair, maintain and renovate the wooden decks covering said concrete piers.

LEASE TERM:

Sixty-five (65) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. a, Item No. 1 that states "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

The Land Board at its meeting of January 26, 1990, under agenda Item H-5, approved the Applicant's after-the-fact conservation district use application for the use of an existing wooden deck supported by concrete piers on and over submerged State lands. (CDUA #MA-9/5/89-2296)

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to

register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment.

BACKGROUND:

The Land Board at its meeting of January 26, 1990, under agenda Item H-5, approved an after-the-fact conservation district use permit for a deck extension over submerged lands. The Applicant (Hanson Art Galleries) was seeking approval for the existing structure consisting of a two-story extended deck. The deck is part of the Applicant's retail art establishment and encroaches on State submerged lands. A \$1,000 fine was assessed for violation of Chapters 171-6 and 183-41, HRS.

The Land Board at its meeting of May 11, 1990, under agenda Item F-6, approved staff's recommendation to authorize the direct sale of a 20 year, term, non-exclusive easement to Hanson Galleries, Inc. for maintenance and repair of existing concrete piers and for the use, repair, maintenance and renovation of the wooden deck. The open deck portions and the supporting concrete piers were initially constructed probably in the 1920's. However, there are no records on file indicating that approval was given either by the County of Maui or the Territory of Hawaii for construction of these improvements.

Subsequently, the Land Board at its meeting of January 22, 1993, under agenda Item F-4, staff recommended an amendment of the Board's prior approval to change the name of the Applicant from Hanson Galleries, Inc. to Elizabeth D. Wilson, as Trustee of the Lakala Trust. Lease of Non-Exclusive Easement S-5252 commenced on May 25, 1992. The rent for the first 10 years was \$5,160 per annum.

The Land Board at its meeting of May 23, 2003, under agenda Item D-8, approved and amended staff's recommendation to change the easement area from 1,147 square feet to 1,310 square and amend the rent based on additional area. The Board deleted the imposition of a \$500 fine. During the refinancing of an existing loan, a field survey revealed that the existing two-story deck extended six feet beyond the easement area. A review of the Department files indicate the deck renovation plans were approved by the Conservation District planners on December 10, 1998. These plans appear to be consistent with the existing easement and do not highlight any extension beyond the easement area. The Applicant claims that removal of the encroachment (approximately 163 square feet) would be structurally, functionally, and legally problematic. Leases were entered into with retail and restaurant operators based on the existing improvements. Therefore, Applicant requested the easement be

amended to rectify the problem. The amendment document was executed on April 16, 2004. The annual rent was revised to \$13,703.

On July 8, 2009, Mr. Thomas Cole, attorney for Lakala Trust is requesting mutual cancellation of Lease of Non-Exclusive Easement S-5252 and the re-issuance of a new term, non-exclusive easement. The Trust is considering financing the property and a long-term easement is needed.

ANALYSIS:

Applicant is not proposing to change the current use.

The Lessee is in compliance with all lease terms and conditions. Rent is paid up to November 24, 2009. Liability insurance expires on July 24, 2009. Bond is not a requirement. In the past two (2) years, no Notice of Default letters were issued.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited from:

DHHL	No comments
County of Maui Planning	No response
OHA	No response
OCCL	No objections

Pursuant to Section 171-53, HRS, "the board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter." Staff will have to work with the Applicant in obtaining the legislative concurrent resolution.

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the mutual cancellation of Lease of Non-Exclusive Easement S-5252, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current mutual cancellation document form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and

- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
- 3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-5-001:006, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
- 4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to Meri-Jo Abrams Manuel, Trustee of the Lakala Trust covering the subject area for wooden deck and concrete piers purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
  - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-5-001:006, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
  - C. Review and approval by the Department of the Attorney General; and

- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



FRONT STREET

TRUE NORTH  
SCALE: 1 in. = 20 ft.

R.P. 1735, L.C. Aw. 351 to  
Kaenaena

R.P. 1703, L.C. Aw. 2762, Ap. 3 to  
Nawaakoa

7344.09 S  
4257.56 W  
"LAINA" Δ

232'09" — 5.82

Government Land  
(Filled Area)  
(C.S.F. 16,697)

232'09" — 12.11

313'50" — 32.95  
51'33" — 11.28  
1310 SQ. FT.  
142'03" — 31.40  
54'31" — 31.78  
232'09" — 20.39

Non-Exclusive  
Easement for  
Maintenance of  
Wooden Deck and  
Concrete Pillars  
(C.S.F. 20,771)

Non-Exclusive  
Easement for  
Maintenance of  
Wooden Deck and  
Concrete Piers  
(C.S.F. 21,260)

S E A

PRELIM. APPR'D.  
Department of the  
Attorney General

(REVISED — AUGUST 2003)

PORTION OF THE UNDERWATER AREA FRONTING  
R.P. 1703, L.C. AWARD 2762, APANA 3 TO NAWAAKOA

Lapaakea, Lahaina, Maui, Hawaii

JOB Ma-143(03)

C. BK.

Scale: 1 inch = 20 feet

REDUCED NOT TO SCALE

TAX MAP: 4-5-01

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

C.S.F. NO. 23,597

STATE OF HAWAII

JGL August 4, 2003

EXHIBIT

A



PHOTOGRAPHS OF SUBJECT PROPERTY AND VICINITY  
Lahaina, Maui, Hawaii



Southeasterly view from Parcel 7. The subject property involves the submerged land below the two-story restaurant/deck improvements that extend over the water.

EXHIBIT "A"